(1)

Supreme Court, U.S.
FILED

01 231 AUG 6 - 2001

OFFICE OF THE CLERK

No. 01-

IN THE

Supreme Court of the United States

DUSTIN DAVID SANDERS,

Petitioner,

v.

BOY SCOUTS OF AMERICA and
TRANSATLANTIC COUNCIL UNIT 29242,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

JAMES J. WEST
Attorneys for Petitioner
105 North Front Street
Suite 210
Harrisburg, PA 17101
(717) 233-5051

168376

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

101PP

QUESTIONS PRESENTED

1. Whether a federal corporation (Boy Scouts of America) created by Congress to "sue and be sued within the jurisdiction of the United States" can, by issuing a charter, create a foreign unincorporated association whose fundamental purpose is to service the dependents of United States miliary personnel through funds statutorily provided by Congress that is not subject to personal jurisdiction in the United States under the due process clause.

2. Whether 10 U.S.C.S. § 2606 which authorizes the Secretary of Defense, upon determination of the President of the United States, to promulgate regulations authorizing cooperation, assistance, transportation, office space and payment of salary of employees of the Boy Scouts of America, can be considered in making a constitutional due process (fundamental fairness) determination of personal jurisdiction.

3. Whether it violates the Constitution of the United States of America for the Commonwealth of Pennsylvania or any other court of the United States to assert personal jurisdiction over the Transatlantic Council of the Boy Scouts of America.

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Cited Authorities iv

Table of Appendices viii

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Statutory Provisions Involved ... 1

Statement of the Case 4

A. The Boy Scouts of America 7

B. The Transatlantic Council of the Boy Scouts of America 8

C. The Proceedings Below 13

Reasons for Granting the Writ 15

I. The Pennsylvania courts' interpretations of the Federal Statutes, Department of Defense Regulations and Memorandum of Understanding conflict with this Court's prior

Contents

Page

decisions on parent/subsidiary relationships and the interpretation of federal statutes as well as creating unprecedented and dangerous interpretations of federal corporate law. 15

II. Pennsylvania and other states can constitutionally assert personal jurisdiction over the Transatlantic Council of the Boy Scouts of America. 24

Conclusion 28

TABLE OF CITED AUTHORITIES

Page

Cases:

American National Red Cross v. S.G., 505 U.S. 247, 120 L. Ed. 2d 201, 112 S. Ct. 2465 (1992) 15

Asahi v. Superior Court of California, 480 U.S. 102, 94 L. Ed. 2d 92, 107 S. Ct. 1026 (1987) 23

Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 108 L. Ed. 2d 652, 110 S. Ct. 1391 (1990) 19

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985) 25, 27

Calder v. Jones, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984) 1

Cannon Manufacturing Co. v. Cudahry Packing Co., 267 U.S. 333, 69 L. Ed. 634, 45 S. Ct. 250 (1925) 16, 22

Franklin v. Massachusetts, 505 U.S. 788, 120 L. Ed. 636, 112 S. Ct. 2767 (1992) 26

Gallagher v. Mazda Motor of America, Inc., 781 F. Supp. 1079 (E.D. Pa. 1992) 16

Glenn v. Boy Scouts of America, et al., No. 95-1416 (U.S.D.C. W.D. LA 07/10/96) 22

Cited Authorities

	Page
Landreth Timber Co. v. Landreth, 471 U.S. 681, 85 L. Ed. 2d 692, 105 S. Ct. 2297 (1985)	17
Muse v. Boy Scouts of America, et al., No. 97-1944-c (U.S.D.C. W.D. OK 09/11/1998)	22
Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 (1878)	18
Pulese v. Boy Scouts of America, et al., No. 90-745 (U.S.D.C. M.D. Pa. 02/13/1991)	22
Pulese v. Boy Scouts of America, et al., No. 90-745 (U.S.D.C. M.D. Pa. 02/19/1991)	22
Turek v. Lane, 317 F. Supp. 349 (E.D. Pa. 1970) ..	26
Tyler Jones v. Boy Scouts of America, et al., No. 120414 (04/19/1994)	23
United Mine Workers of America v. Coronado Coal, 259 U.S. 344, 66 L. Ed. 975, 42 S. Ct. 570 (1922)	19
Zinn v. Zinn, 327 Pa. Super. 128, 475 A.2d 132 (1984)	26

Cited Authorities

Page

United States Constitution:

Article 1, Section 9, Clause 7 10

Fourteenth Amendment 1, 24

Statutes:

10 U.S.C.S. § 2606 ..... i, 2, 9, 11, 12

10 U.S.C.S. § 2606(e) 17

10 U.S.C.S. § 2606(f) 9

10 U.S.C.S. § 2606(g) 9, 10, 17

28 U.S.C. § 1257(a) 1

36 U.S.C.S. § 10101, *et seq.* 23

36 U.S.C. § 30902 11

36 U.S.C.S. § 30904(a)(5) 2, 15

36 U.S.C.S. § 309036 5

36 U.S.C.S. § 300101, *et seq.* 23

42 Pa. C.S. § 5322(a)(4) 7

42 Pa. C.S. § 5322(b) 7

Cited Authorities

Page

Other Authorities:

Casad, *Jurisdiction in Civil Actions*, Vol. 1 (1998) .. 16

Restatement of Conflict Law. 2d § 37 23

TABLE OF APPENDICES

Page

Appendix A — Memorandum And Order Of The Superior Court Of Pennsylvania Dated November 17, 2000 ..... 1a

Appendix B — Opinion And Order Of The Court Of Common Pleas Of Adams County, Pennsylvania Dated November 9, 1999 ..... 4a

Appendix C — Per Curiam Order Of The Supreme Court Of Pennsylvania For The Middle District Denying Petition For Allowance Of Appeal Dated May 8, 2001 ..... 25a

Appendix D — Executive Orders No. 12715 Dated May 3, 1990 ..... 26a

Appendix E — Department Of Defense Instruction Dated October 31, 1990 ..... 27a

Appendix F — Letter From Transatlantic Council Of The Boy Scouts Of America Dated January 17, 1990 ..... 35a

Appendix G — Memorandum Of Understanding Dated October 7, 1991 ..... 37a

Appendix H — Intraorganization Communication Of The Boy Scouts Of America Dated February 12, 1975 ..... 62a

Dustin David Sanders respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the Superior Court of Pennsylvania in this case.

OPINIONS BELOW

The Opinion and Order of the Court of Common Pleas of Adams County, Pennsylvania, was filed on November 9, 1999 (App. 4a through 24a); The Superior Court of Pennsylvania affirmed the Opinion of the Court of Common Pleas of Adams County on November 17, 2000 (App. 1a through 3a); The Supreme Court of Pennsylvania denied a Petition for Allowance on appeal on May 8, 2001 (App. 25a).

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The judgment is final under *Calder v. Jones*, 465 U.S. 783, 788 at n.8, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984) and cased cited therein.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 14

The Constitution of the United States of America provides in pertinent part as follows:

Section 1. Citizens of the United States.

> * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. * * *

36 U.S.C.S. § 30904(a)(5)

Title 36 of the United States Code deals with patriotic and national organizations and at Chapter 309 incorporates the Boy Scouts of America specifically providing at 36 U.S.C.S §30904(a)(5) that "the corporation may * * * sue and be sued within the jurisdiction of the United States".

10 U.S.C.S. § 2606

Title 10 of the United States Code dealing with the Armed Forces provides as follows:

§ 2606. Scouting: cooperation and assistance in foreign areas

(a) Subject to subsection (b), the Secretary concerned may cooperate with and assist qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States.

(b) Cooperation and assistance under subsection (a) shall be provided under regulations prescribed by the Secretary of Defense and may be provided only if the President determines that

such cooperation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces.

(c) Personnel of a qualified scouting organization, including officials certified by that organization as representing that organization, who are performing duties in connection with cooperation and assistance provided under subsection (a) may be furnished —

(1) transportation at the expense of the United States while traveling to and from, and while performing, such duties in the same manner as civilian employees of the United States; and

(2) available office space (including space for recreational activities for Boy Scouts and Girl Scouts), warehousing, utilities, and a means of communication, without charge.

(d) Supplies of a qualified scouting organization may be transported at the expense of the United States if the Secretary concerned determines, under regulations prescribed under subsection (b), that the supplies are necessary to the cooperation and assistance provided under this section.

(e) The Secretary concerned may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services under subsection (a).

Any such reimbursement may not be made from appropriated funds and shall be made under regulations prescribed under subsection (b).

(f) For the purposes of this section, employees of a qualified scouting organization performing services under subsection (a) may not be considered to be employees of the United States.

(g) In this section, the term "qualified scouting organization" means the Girl Scouts of the United States of America and the Boy Scouts of America. (Added Sept. 29, 1988, P.L. 100-456, Div A, title III, Part C, § 323(a), 102 Stat. 1953.)

STATEMENT OF THE CASE

The Boy Scouts of America have a long history of homosexual pedophiles attempting to become scoutmasters so as to obtain access and control over impressionable male children. Accordingly, the Boy Scouts of America has a procedure whereby confessed homosexual child molesters are reported to the headquarters office in Texas and disqualified from volunteer positions throughout the Boy Scouts of America. This listing is known as the ineligible volunteer or "red flag" file.[1]

---

1. In the 1994 book "Scouts Honor", Washington Times reporter Patrick Boyle summarized his 1991 Washington Times series on child molesters in the Boy Scouts documenting scores of cases. The complaint filed in this case specifically cited the book as showing the persistent and long standing nature of the problem.

This is a suit by a former Boy Scout of America, Dustin David Sanders, brought in the Court of Common Pleas of Adams County, Pennsylvania alleging that the Boy Scouts of America and the Transatlantic Council of the Boy Scouts of America are responsible for sexual assaults committed upon him from 1992 through 1994 (when Dustin was 13 to 15 years old) by his then scoutmaster, James Dickinson.[2]

In the early 1980's James Dickinson, then an American civilian employed by the Department of Defense as a teacher at the American school in Germany, also served as a scoutmaster in Troop 444 of the Transatlantic Council of the Boy Scouts of America where he began sexually assaulting children of United States Army Officers that belonged to his scout troop. After several years, he was discovered, arrested and confessed but when released on bond pending trial he jumped bail and fled back to the United States where he promptly (1985) became the scoutmaster for Troop 79 of the York-Adams Area Council of the Boy Scouts of America in Gettysburg, Pennsylvania. He immediately commenced sexually assaulting young boy scouts belonging to the Gettysburg scout troop.

The Professional Scouter[3] assigned to the Transatlantic Council of the Boy Scouts of America in Germany who was

---

2. In 1997 Dustin David Sanders reported these assaults to the authorities and Dickinson was arrested, tried, convicted and sentenced to imprisonment.

3. A Professional Scouter is trained and certified by the Boy Scouts of American under its Bylaws and Rules promulgated by the Executive Board authorized by its Congressional charter. *See* 36 U.S.C.S. § 309036 and Boy Scout Bylaws, Article VIII, § 2. (Cont'd)

responsible for reporting Dickinson's sexual assaults to Boy Scout headquarters was Walter Steffen. He had that obligation in the early 1980's when Dickinson confessed to assaulting Army Officers' children in Germany. He again had that obligation when he saw Dickinson's picture in an article in the September 1991 issue of *Scouting* Magazine which repeatedly identified Dickinson as the scoutmaster of Troop 79 in Gettysburg, Pennsylvania.[4] Professional Scouter Steffen was Director of Field Services assigned to the Transatlantic Council when he saw this article and he immediately called a retired Army Colonel (living in the United States) whose son had been one of the children molested by Dickinson, expressed shock and disbelief that Dickinson was a scoutmaster in Gettysburg, Pennsylvania, and promised the molestation victims' father that he would immediately inform the Boy Scouts of America.

What happened next is unclear. Boy Scout headquarters indicates that Dickinson is not on the "red flag" list as a confessed child molester and either Professional Scouter Steffen reported Dickinson and the Boy Scouts of America did not list him or he failed to report as required and liability flows from that failure. In 1993, Professional Scouter Steffen returned to the United States where he eventually retired with a Boy Scouts of America pension and died in 1997. The Boy Scouts of America and the Transatlantic Council of the Boy

---

(Cont'd)
A local council must employ such professional scouters in policy positions selected from lists of eligibles provided by the Boy Scouts of America's national office. Boy Scouts of America Rules and Regulations, Article VIII, § 5.

4. *Scouting, Discovering a Subterranean Wilderness*, pp. 22-23.

Scouts of America are defending this case on the basis that Professional Scouter Steffen never reported Dickinson as a child molester and Steffen is an employee of the Transatlantic Council of the Boy Scouts of America — a German organization over which courts in the United States cannot obtain jurisdiction — and the Boy Scouts of America are not responsible for his conduct.[5]

Pennsylvania has statutorily authorized its courts to exercise jurisdiction when an entity causes "harm or tortuous injury by an act or omission outside the state" to the fullest extent allowed under the Constitution of the United States" 42 Pa. C.S. §§ 5322(a)(4) and (b). The Adams County Court held that it could not constitutionally assert jurisdiction over the Transatlantic Council of the Boy Scouts of America. The Superior Court of Pennsylvania affirmed and the Pennsylvania Supreme Court denied review.

A. The Boy Scouts of America

The Boy Scouts of America is a federal corporation which Congress has statutorily provided "may * * * sue and be sued within the jurisdiction of the United States." As a matter of federal corporate law it is a national citizen.

---

5. We do not intend to malign Walter Steffen. His widow is convinced that he would have reported any indication of a child being sexually molested, but such is not admissible evidence while the Boy Scout headquarters finding that they have no record of a child molester report probably is admissible evidence. Obviously, the Boy Scouts are legally entitled to contend that their Professional Scouter of thirty years is responsible if he worked for a separate entity, the Transatlantic Council, since the burden of proof is on the Plaintiff, Sanders.

B. The Transatlantic Council of the Boy Scouts of America

The Transatlantic Council of the Boy Scouts of America was started after World War II to service the sons of American solders stationed in post-war Europe. It was a "direct service organization" meaning that it was directly operated by the Boy Scouts of America from its then New York City headquarters. In 1959 it was issued a charter by the Boy Scouts of America and named the Transatlantic Council of the Boy Scouts of America.[6] At this time the Boy Scouts of America made a conscious and intentional decision not to incorporate the Transatlantic Council.[7]

By Statute Congress has provided that the Boy Scouts of America, pursuant to Presidential determination and

---

6. These facts are from a discovery document outlining the history of the Transatlantic Council of the Boy Scouts of America.

7. See request for approval of the Transatlantic Council constitution and bylaws dated February 12, 1975. App. 62a through 63a where the Boy Scouts of America make the decision not to incorporate the Transatlantic Council, stating as follows:

> The uniqueness of the council operation and its close association with the Seventh Army demands a variance in format. The only exception of consequence is its being a Constitution instead of Articles of Incorporation and reference to Military requirements, stated in Article IV under principles and policies. The Bylaws do not depart from our standard in intent, purpose, terminology or principle. In fact, the Bylaws are excellent.
>
> It is my understanding that the only way we could have the council incorporated with this Germany address is to go through the Secretary of the State of Delaware. I do not think that is necessary.

regulations issued by the Secretary of Defense, can be provided with transportation, office space, space for recreational activities, transportation for supplies and be reimbursed for "all or part of the pay of an employee" of the Boy Scouts of America when performing services for members of the Armed Forces, civilian employees of the Department of Defense and their dependents.[8] 10 U.S.C.S. § 2606[9]. These items have all been provided, including payment of Walter Steffen's salary.

The various Presidents have made the required finding that support of "overseas scouting activity * * * is necessary in the interest of the morale, welfare and recreation of members of the armed forces"[10] and the Secretary of Defense has promulgated the regulations called for by Congress under Department of Defense Regulation Number 1015.9 (10/31/90).[11] This detailed regulation "[a]pplies to

8. The Statute uses the term "qualified scouting organization" and specifically defines it as "the Girl Scouts of the United States of America and the Boy Scouts of America". 10 U.S.C.S. § 2606(g). It also makes clear that the Boy Scouts' employees whose salaries are reimbursed with United States' money under its terms "may not be considered to be employees of the United States." 10 U.S.C.S. § 2606(f).

9. See complete text in Constitution and statutory provisions section of this Petition at page 1, *infra*.

10. *See, e.g.*, Executive Order 12715 of May 3, 1990. App. 26a. The statutes, regulations and contracts (Memorandum of Understanding) cited herein are the ones in effect when Professional Scouter Steffen promised one of the military molestation victim's father that he would inform the Boy Scouts of America that a confessed child molester was the Scoutmaster for Troop 79 in Gettysburg, Pennsylvania.

11. These regulations are not contained in C.F.R. and accordingly, are attached hereto at App. 27a through 34a.

the Boy Scouts of America" and specifically excludes "other independent federally sanctioned, or affiliated types of private organizations"[12] and provides appropriated funds for office space, supplies, transportation of people and household goods, warehousing, utilities and means of communication. They also provided that non-appropriated funds[13] may be used for overseas scouting to reimburse the Boy Scouts of America "for salaries and benefits of employees" (§ 4.5.2.2 at App. 31a); and, provide a disclaimer that the Boy Scout employees whose salaries are so reimbursed are not to be considered employees of the United States (§ 4.5.4 at App. 31a). Both the statute and the regulations use the term "qualified scouting organizations" and specifically and unequivocally defines it as "the Girl Scouts of the United States of America and the *Boy Scouts of America*." (10 U.S.C.S. § 2606(g), page 2, *infra*; Department of Defense Regulation Number 1015.9, definitions § 3.1, App. 29a.)

---

12. *See* Regulations at 28a, paragraphs 2.2 and 2.3. The Regulations also define "*Qualified Scouting Organization*" as the Boy Scouts of America — the exact language Congress used in the funding statute. App. 29a, paragraph 3.1 with 10 U.S.C.S. § 2606(g) at page 2 *infra*.

13. Appropriated funds would be money from the Treasury of the United States pursuant to Congress' spending authority. Constitution, Article 1, Section 9, Clause 7. Non-appropriated funds are monies which are not appropriated by Congress and come primarily from the sale of goods and services to the Department of Defense military and civilian personnel and their family members and are earmarked to support morale, welfare, recreation and billeting as well as certain religious and educational programs. Non-appropriated funds are government funds. *See* Chapter 1, Non-appropriated Fund Accounting, Department of Defense Financial Management Regulation, Volume 13, Chapter 1.

The Chief Scout Executive of the Boy Scouts of America[14] and the three European Commanders in Chief of the United States Armed Forces (Army, Navy and Air Force) entered into a Memorandum of Understanding to "define, delineate and agree to the supplies, equipment, services and funding provided by the USEUCM (United States European Command)" and "the services to be provided by the Transatlantic Council (TAC) of the Boy Scouts of America".[15] This agreement is entered into pursuant to Congress' Statute, 10 U.S.C.S. § 2606 (page 2, *infra*), and the Secretary of Defense's Regulations, No. 1015.9 (App. 27a through 34a), and specifically states that the Transatlantic Council is "an administrative arm of the Boy Scouts of America * * * charted by the National Council of the Boy Scouts of America to have responsibility for the scouting programs within the countries assigned."[16] The Memorandum of Understanding

---

14. Under Article IV, Section 8, of the bylaws of the Boy Scouts of America, "[t]he Chief Scout Executive shall serve as Chief Executive Officer of the corporation."

15. This Memorandum of Understanding is attached hereto as App. 37a through 61a. The quote can be found on page 38a.

16. App. 43a, § 1. Over 130 countries have their own national Boy Scout Program, i.e., the Boy Scouts of Germany, the Boy Scouts of England, etc. The Transatlantic Council of the Boy Scouts of America is the Boy Scouts of America servicing the children of American soldiers and citizens overseas. Teaching patriotism is one of the Boy Scouts of America's federally chartered functions, 36 U.S.C. § 30902. This is patriotism to the United States not to the countries covered by the Transatlantic Council of the Boy Scouts of America which are: Germany, France, Italy, The Netherlands, Luxenbourg, Belgium, Great Britain, Scotland, Northern Ireland, Greece, Portugal, Morocco, Turkey, Norway, Switzerland, Austria, (Cont'd)

specifically identified twenty-five of the employees of the Boy Scouts of America whose salary, retirement plan, health care will be reimbursed by non-appropriated funds of the United States.[17] It also provides that the number of Boy Scouts of America employees will not be increased or decreased without permission of the military scout committee.[18] This section also specifically states that "the TAC (Transatlantic Council of the Boy Scouts of America) will function as a federally charted and sanctioned private organization in accordance with governing regulations."[19] Walter Steffen was one of the executive staff members whose salary was reimbursed to the Boy Scouts of America pursuant to Congress' statute, Department of Defense Regulations and the Boy Scouts of America's Memorandum of Understanding.

(Cont'd)
Wales, and Spain. Included are the islands of Crete, Sicily, Sardinia, and the Azores. Almost all of these assigned countries have their own national boy scout group promoting that particular country's patriotism but they are not funded and their employees are not paid through legislation by the United States Congress authorizing the funding of the Boy Scouts of America overseas. (10 U.S.C.S. § 2606 at pp. 2-4)

17. App. 45a through 46a and 57a through 59a.

18. Control over the number of Boy Scout employees (like Steffen) paid by the military is in the Memorandum of Understanding at paragraph 7 (App. 44a). The military committees overseeing the Boy Scouts' budget for Europe are set up in the Department of Defense Regulations at paragraph 4.5.5 (App. 32a).

19. App. 59a at paragraph 6.

C. The Proceedings Below

The Transatlantic Council of the Boy Scouts of America filed preliminary objections to the Plaintiff's complaint contending that it was exclusively a German organization and could not be sued in Pennsylvania or anywhere in the United States. After a short period of discovery, the Plaintiff responded pointing out that the Transatlantic Council of the Boy Scouts of America was never separately incorporated (as stateside councils were) and contending that in light of the statutory and regulatory scheme and the Boy Scouts CEO's Memorandum of Understanding the Court could obtain personal jurisdiction over the Transatlantic Council of the Boy Scouts of America.

The Adams County Court ruled that because the Transatlantic Council of the Boy Scouts of America was unincorporated and since no guidance was found in the case law attributing contacts of a parent organization to an unincorporated association, it gave the unincorporated association the full attributes of a formal corporation and held that all contacts of the Boy Scouts of America with the United States and Pennsylvania were irrelevant in determining the personal jurisdiction issue.

Insofar as the federal statutes, regulations and the Boy Scouts CEO's Memorandum of Understanding were concerned, the Adams County Court ruled as follows:

> Plaintiff further asserts that because Congress enacted laws which provided assistance to "qualified scouting organizations" overseas, and define "qualified scouting organization" as BSA or Girl Scouts of the United States of America,

> this Court should rely on those descriptions and find that TAC is merely the alter-ego of BSA. *See*, 10 U.S.C. §2606. Plaintiff cites other documentation with key words describing TAC as the "administrative arm" of BSA and TAC professional scouts and clerical staff as "employees" of BSA to support the alter-ego theory. *See*, 10 U.S.C.S. §§2605-06; MOU. The Court declines to rely on these statutes and documents as determinative of an alter ego or agency relationship between TAC and BSA. Congress and the U.S. military drafted those statutes and documents for the purpose of ensuring that children of U.S. military and civilians serving abroad would have access to scouting programs. The statutes and documents were not intended to define the relationship between BSA and TAC and, when read in their entirety, cannot be construed as describing the relationship between BSA and TAC or assigning roles for BSA and TAC.

Finally, the Court held that under the Federal Due Process clause, the Transatlantic Council could not anticipate being haled into court in Pennsylvania and that it would be fundamentally unfair to force the Transatlantic Council of the Boy Scouts of America to defend itself in Pennsylvania or any other court in the United States.

Authorization to appeal was requested and granted. The Superior Court affirmed based on the lower Court's Opinion. The Pennsylvania Supreme Court denied review.

REASONS FOR GRANTING THE WRIT

I. The Pennsylvania courts' interpretations of the Federal Statutes, Department of Defense Regulations and Memorandum of Understanding conflict with this Court's prior decisions on parent/subsidiary relationships and the interpretation of federal statutes as well as creating unprecedented and dangerous interpretations of federal corporate law. (Questions 1 and 2)

When Congress created the Boy Scouts of America it clearly provided that the corporation "may * * * sue and be sued within the jurisdiction of the United States." This Statute is interpreted under federal common law and the recipient of such a federal corporate charter is a national citizen capable of being sued anywhere it can be found in the United States. *See American National Red Cross v. S.G.*, 505 U.S. 247, 120 L. Ed. 2d 201, 112 S. Ct. 2465 (1992). The lower Pennsylvania courts have now squarely held, at the urging of the Boy Scouts of America, that the Transatlantic Council of the Boy Scouts of America cannot be "sued within the jurisdiction of the United States."

The decision below is antagonistic to the Congressional intent that the Boy Scouts of America "may * * * sue and be sued within the jurisdiction of the United States". 36 U.S.C.S. § 30904(a)(5). Moreover, by holding that the Transatlantic Council of the Boy Scouts of America is an unincorporated association that has the attributes of a corporation for purposes of determining personal jurisdiction, the lower court has mistakenly projected the direction of the federal corporate law and squarely gone against this Court's established rule on the imputation of parent/subsidiary contacts.

In *Cannon Manufacturing Co. v. Cudahry Packing Co.*, 267 U.S. 333, 69 L. Ed. 634, 45 S. Ct. 250, 250-52 (1925), Justice Brandeis specifically held that as long as the corporate formalities were strictly observed, the jurisdictional contacts of a parent and subsidiary could not be imputed to one another for purposes of personal jurisdiction. This became known as the *Cannon Rule* and since its promulgation in 1925 both federal and state courts have speculated that the *Cannon* "strict corporate formalities" approach was overruled *sub silento* by the minimum contacts analysis of subsequent cases and have adopted other more liberal approaches such as the alter-ego approach (centered on control) and the same mission approach (centered on the subsidiary doing required parent duties) resulting in jurisdictional contacts being more readily imputed between a parent corporation and its formally incorporated subsidiary. See discussion and numerous cases cited in *Gallagher v. Mazda Motor of America, Inc.*, 781 F. Supp. 1079, 1084-86 (E.D. Pa. 1992).[20]

The ruling in this case ignores the *Cannon Rule's* requirement of strict adherence to corporate formalities as a predicate to parent/subsidiary separation of contacts and holds as a matter of federal corporate law that you do not have to incorporate to obtain the benefits of *Cannon* parent/subsidiary analysis and that a federal corporation can charter an unincorporated association that has the attributes of a

---

20. *See also* Casad, *Jurisdiction in Civil Actions*, Vol. 1 at pp. 506-511 (1998) which gathers together virtually dozens of federal and state cases where the *Cannon Rule* has been distinguished and actual corporate subsidiaries and parents have been found to be responsible for their respective contacts. The cases for three quarters of a century have been relaxing the *Cannon Rule* and making it easier for parent/subsidiary imputation of contacts for jurisdictional purposes.

formally incorporated subsidiary for purposes of personal jurisdiction analysis. This holding and its implications clearly goes against the basic precepts of federal corporate law and transmogrify those precepts into a new and previously unannounced legal fiction — the unincorporated corporation.

Equally important is the fact that the lower court ignored the plain language of the statute funding overseas scouting, the Department of Defense regulations promulgated pursuant to that statute and the Memorandum of Understanding entered into by the United States military Commanders in Chief for Europe and the Chief Executive Officer of the Boy Scouts of America in determining whether the contacts of the Boy Scouts of America and Transatlantic Council could be imputed to one another on the basis that Congress did not intend to "define the relationship between the Boy Scouts of America and the Transatlantic Council". This Court has long held that it is axiomatic that "the starting point in every case involving construction of a statute is the language itself". *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685, 85 L. Ed. 2d 692, 105 S. Ct. 2297 (1985) and cases cited therein. Under the statute funding overseas scouting, the language authorizing benefits (particularly the provision authorizing reimbursement of the Boy Scouts of America for salaries) is crystal clear, unequivocal and subject to only one logical interpretation, i.e., only salaries of *employees* of the Boy Scouts of America are eligible for reimbursement (10 U.S.C.S. §§ 2606(e) and (g) set forth a pages 3 and 4, *supra*.) This interpretation is confirmed by the military regulations promulgated by the Secretary of Defense (App. 27a through 34a) and the actual Memorandum of Understanding providing for the military to approve the hiring and expansion of the number of Boy Scouts of America employees operating the Transatlantic Council and naming

twenty-five reimbursable positions (including the one Walter Steffen held) (App. 37a through 61a).[21] The lower court's holding not only cuts against this Court's numerous cases dealing with statutory construction, but it totally negates a clear statutory and regulatory scheme put in place by the legislative and executive branches and presents numerous very important practical questions that will be elaborated on below.

Corporations are creatures of Statute. Federal corporations are formed by acts of Congress with specific powers and purposes which are controlled by those Statutes. *See Pennoyer v. Neff*, 95 U.S. 714 at 735, 24 L. Ed. 565 (1878). The lower court squarely held that as a matter of federal corporate law a federal corporation can by charter create an unincorporated association that has a purpose and attributes identical to a federal corporation, but which has a legal existence unencumbered by the "sue and be sued within the jurisdiction of the United States" provision of Congress' original creating Statute.[22] This frustrates Congress' purpose in creating the Boy Scouts of America and even creates significant adverse results to the Boy Scouts which would even further frustrate Congress' intent under the overseas funding scheme.

---

21. The twenty-five employees are named by position and salary rating at paragraph 7 of the Memorandum of Understanding (App. 44a through 46a) and the method of payment section specifically provides "[t]he TAC will function as a federally chartered and sanctioned private organization." (App. 59a).

22. The Charters and Bylaws relevant to the Transatlantic Council of the Boy Scouts of America were produced in the lower court. There is no doubt that the group is formed for the express purposes of bringing boy scouting as created by Congress to the sons of American servicemen stationed abroad.

For example, an unincorporated association does not have limited liability by definition and, accordingly, the individual military officers, professional scouters and volunteer scoutmasters will have a "high risk of personal liability * * * in an uncertain legal climate." *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 at 711, 108 L. Ed. 2d 652, 110 S. Ct. 1391 (1990). The individual members of such an association are personally liable for torts committed by the association and this Court has recognized that even in the case of a United States based unincorporated association, this could leave plaintiffs remediless for all practical purposes. *United Mine Workers of America v. Coronado Coal*, 259 U.S. 344, 389, 576, 66 L. Ed. 975, 986, 42 S. Ct. 570 (1922). Accordingly, from both sides of this litigation we have a significant eroding of the practical effectiveness of the legal system as well as the potential for harm, not help, to military morale.

In addition, the professional scouters and American military officers participating in scouting would find themselves exposed to personal liability in the courts of whatever country they are assigned to for torts committed by the unincorporated association.[23] Moreover, injured scouts find themselves having to sue in overseas courts, a requirement that creates a high practical probability that

23. Obviously, the Transatlantic Council of the Boy Scouts of America has no corporate or civilian community supporting it at its locations in Europe and relies on military officers and American civilian employees, such as James Dickinson, to fill its ranks. See letter to Chief Scout Executive from the Transatlantic Council of the Boy Scouts of American, App. 35a through 36a. "In this military setting with no real corporate or civilian community support" appointment of the Transatlantic Council leadership by military commanders "has proven to be pragmatic, viable and most effective."

they will be left remediless. Again, from both sides of this litigation we have a significant eroding of Congress' intent in creating the scouting corporation and funding overseas scouting.

An entire statutory scheme and regulatory scheme put in place by the legislative and executive branches and culminating in a contract with the Chief Executive Officer of the Boy Scouts of America has been negated by the lower court's ruling that Congress, the executive branch and the contract don't mean what they clearly say. This also raises the importance of this case to an extremely high level. In putting this regulatory scheme in place, the legislative and executive branches were both fulfilling their responsibilities in critical areas — the protection of children and the morale of United States troops sent overseas to serve their states and country. Under the lower court's ruling tens of thousands of America citizens involved with the military both overseas and in this country are deprived of their rights to have to access to the courts of the United States of America. Moreover, these United States' citizens will be relegated to courts in multiple foreign countries that have little or no interest or stake in cases involving citizens of the United States and they will be forced to litigate it under strange laws in a strange language and, in practical application, will be left remediless by the lower court's interpretations of federal corporate law, statutes, regulations and contracts.

It is also important that under the lower courts' holdings millions of dollars in appropriated and non-appropriated United States' government funds are being expended on an unincorporated association that doesn't even have minimum contacts with the United States of America for purposes of personal jurisdiction. This same unincorporated association is being given access to United States military bases,

equipment, transportation systems and communication networks through the expenditure of appropriated funds while the Boy Scouts of America are being reimbursed with government funds for the salaries of the employees who actually run the unincorporated association. These are additional important considerations that Congress, the President, the Department of Defense and the three Commanders in Chief of European forces made in creating this comprehensive statutory, regulatory and contractual scheme allowing the Boy Scouts of America to provide scouting services overseas for American soldiers and citizens and they are totally negated by the lower court's decision.

This case does not represent a limited one time occurrence. The Boy Scouts of America have had up to 30,000 sons of American servicemen as members of the Transatlantic Council of the Boy Scouts of America in Europe and has a Far East Council covering Asia (Korea, Japan, *etc.*) with even additional members. The Girl Scouts of the United States of America have a similar charter from Congress with an identical "sue and be sued" clause and are also covered by the same Department of Defense regulations. The fact that the children that belong to these patriotic national organizations are not directly under military orders, as their parents are, does not diminish the importance of this issue but rather magnifies it many fold.

American servicemen are transient and are transferred continuously to bases in other sections of the world as well as back to the United States.[24] Given the length of time

24. Boy scouts leave troops in the United States when their fathers are transferred to Europe and join troops in Europe. When their fathers are done with their tour of duty and they are still of boy

(Cont'd)

involved in litigation, sons and daughters of these servicemen would not only be forced to litigate in a country whose language and laws they may not understand but to incur a tremendous burden in having to return to the site of the tort or accident in order to have any recovery. For example, the Plaintiff in this case would have to travel to Germany to address a wrong caused in Pennsylvania.

The Boy Scouts of America have set up defensive legal machinery insuring that the lower court's opinion will be immediately and effectively used wherever scouting exists. In this case, the Defendants produced numerous unpublished state and federal cases where employees of *incorporated* local councils were held not to be employees of the Boy Scouts of America under the *Cannon Rule*, *supra* thereby avoiding application of federal statutes and liability to employees.[25]

(Cont'd)
scout age and active in the organization, they return to the United States and again join troops. Affidavits have been presented to the Court identifying numerous boys in the Central District of Pennsylvania who have left Pennsylvania troops, gone to Europe with their fathers, joined Boy Scouts of America troops there and then returned either to their old troops or new troops depending on where the family relocated. These must be the contacts the court was ruling irrelevant as well as the statutory, regulatory scheme discussed.

25. These cases were unpublished but were included in the appendix filed with the Superior Court of Pennsylvania. They are: *Pulese v. Boy Scouts of America, et al.*, No. 90-745 (U.S.D.C. M.D. Pa. 02/19/1991); *Pulese v. Boy Scouts of America, et al.*, No. 90-745 (U.S.D.C. M.D. Pa. 02/13/1991); *Glenn v. Boy Scouts of America, et al.*, No. 95-1416 (U.S.D.C. W.D. LA 07/10/96); and *Muse v. Boy Scouts of America, et al.*, No. 97-1944-c (U.S.D.C. W.D. OK 09/11/1998).

They also produced the case of *Tyler Jones v. Boy Scouts of America, et al.*, No. 120414 (04/19/1994) Superior Court of California, Santa Cruz County, where a Boy Scout belonging to the unincorporated Far East Council was injured in Korea, moved back to Idaho with his family and subsequently brought suit against the Boy Scouts of America in California. The Boy Scouts succeeded in having the case dismissed on the basis of lack of minimum contacts by the unincorporated association known as the Far East Council of the Boy Scouts of America — successfully comparing the Boy Scouts of America with the overseas tire manufacturer in *Asahi v. Superior Court of California*, 480 U.S. 102, 114, 94 L. Ed. 2d 92, 106, 107 S. Ct. 1026 (1987).[26] The statutes and regulations cited in this Petition are not discussed in any way in the *Tyler Jones* case but it is clear that the Boy Scouts of America are prepared to use this position in defense of any scout injury connected with their federally funded overseas operations and only their legal department in Texas knows how many times they have succeeded.

Moreover, Congress has created over 91 patriotic and national organizations in Title 36 of the United States Code alone[27], the vast majority of which are "sue and be sued" organizations running the gamut from the United States Olympic Committee, 36 U.S.C.S. § 10101, *et seq.*, to the American Red Cross, 36 U.S.C.S. § 300101, *et seq.* Can these

---

26. This case is distinguishable from the present case because harm actually occurred in Pennsylvania where the plaintiff resides and suit was brought. This is a basis for favoring jurisdiction under Restatement of Conflict Law. 2d § 37 that is present in the case *sub judice* but was absent in the California case.

27. Numerous other federal corporations such as banks, railroads, *etc.* are created elsewhere in the United States Code.

organizations avail themselves of the same sovereign ability to create by charter foreign unincorporated associations not subject to Congress' "sue and be sued" mandates?

Questions involving the authority of federally chartered corporations rarely reach this Court and almost never reach the court where a single child is hurt. As this case shows, there is much intentional legal maneuvering and confusion about federal corporate law in the lower courts and that important question needs to be clarified. Perhaps the most important indicia that this Court should hear this case is the fact that it deals with a legally created fiction endorsed by this Court (incorporation) which under the facts of this case has absolutely nothing to do with the concepts of fundamental fairness but is capable of depriving numerous severely injured children of their right to be heard in the courts of their own country. In some circumstances the use of such a legal fiction is legitimate and fuels the economy by protecting the investment and expansion of capital, but when Congress has spoken so clearly on the creation and funding of overseas Boy Scout operations, and the Boy Scouts intentionally do not incorporate their subpart, the fundamental fairness that is due, is due to the injured children, not the legal machinations of the organization.

II. Pennsylvania and other states can constitutionally assert personal jurisdiction over the Transatlantic Council of the Boy Scouts of America. (Question 3)

The lower courts made and adopted a clear holding that the Transatlantic Council of the Boy Scouts of America cannot be "sued in the jurisdiction of the United States" on the basis that the requirements of the due process clause of the Fourteenth Amendment of the United States Constitution

were not satisfied because the Transatlantic Council of the Boy Scouts of America was a separate legal entity which lacked "the purposely established" minimum contacts required for it to "reasonably anticipate" being haled into court in the United States. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985). [28]

The lower courts held that in making that constitutional determination the statutes passed by Congress creating and financing the Boy Scouts of America and its overseas operations were irrelevant because they "were not intended to define the relationship between BSA and TAC and, when read in their entirety, cannot be construed as describing the relationship between the BSA and TAC or as assigning roles for the BSA and TAC." These courts further held that

> the unilateral acts of the United States military assigning Pennsylvania residents to duty in Europe and Morocco and returning them home are exactly the type of fortuitous and random contacts that the United States Supreme Court has ruled cannot be considered as evidence that the defendant purposefully availed itself of the forum's privileges and benefits such that it should be subject to the forum state's laws and regulations.[29]

---

28. Since Pennsylvania's Long-arm Statute authorizes its courts to exercise jurisdiction over an entity that causes "harm or tortuous injury by an act or omission outside the state" to the fullest extent allowed by the United States Constitution. The holding in effect declares the Pennsylvania Long-Arm Statute unconstitutional as applied to this case.

29. Adams County Court Opinion, App. 15a.

In doing so the lower courts decided important questions of federal law which should be settled by this court.

First, in arguing the importance of this issue, we would adopt the arguments set forth in the previous section dealing with the significance of federal corporate law, the statutes passed by Congress, the frustration of Congress' intent concerning the suability of federal corporations, the legal consequences of the statutory distribution of appropriated and non-appropriated funds, access to military bases and equipment and the interference with the availability of a remedy for scouts, members of the military and Professional Scouters generally if suit cannot be maintained in the United States.

We would add as an additional important due process issue the holding of the lower court that an American soldier being ordered overseas by his state and country is a fortuitous and random contact which cannot be considered for purposes of determining due process personal jurisdiction. When the governor of a state submits the citizens of the state to federal command and they are sent overseas in time of peace or war, that citizen and accompanying dependents maintain their citizenship, residence and domicile in the state from which they have been ordered. *See Turek v. Lane*, 317 F. Supp. 349 (E.D. Pa. 1970); *Zinn v. Zinn*, 327 Pa. Super. 128, 475 A.2d 132 (1984). The same rule should apply nationally. *See* discussion of United States census counting in *Franklin v. Massachusetts*, 505 U.S. 788, 120 L. Ed. 636, 112 S. Ct. 2767 (1992). This is an extremely important precept going to the legal protection afforded to soldiers and their families serving overseas when injured by federal "sue and be sued" corporations financed with funds provided by the United

States to maintain morale and represents an additional important federal question that the ruling below raises and which merits review.

For the above reasons it is important to determine whether when the federal Statutes, Department of Defense Regulations and the Memorandum of Understanding are correctly interpreted in light of the fact that the Boy Scouts of America intentionally did not incorporate the Transatlantic Council of the Boy Scouts of America, these and other contacts of the Boy Scouts of America with the United States and Pennsylvania are contacts that can be counted and considered in determining whether suing the Transatlantic Council in the courts of Pennsylvania, or any other court in the United States, comports with "fair play and substantial justice". *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985). In making this determination the fact that the target group are the dependents of United States military personnel, many of whom are from Pennsylvania and return to Pennsylvania, is a factor to be considered. To rule such contacts under the circumstances of this case to be "fortuitous and random" presents an important issue of law which must be clarified.[30]

---

30. The Boy Scouts of America and the Transatlantic Council of the Boy Scouts of America do not keep records of from where in the United States Boy Scouts come from or where they go when their fathers and mothers are reassigned. Plaintiff found numerous examples of Professional Scouters, Scoutmasters and scouts originating from and returning to Pennsylvania through investigation and produced them to the lower court to confirm that Pennsylvania supplies citizens to the United States military who engage in scouting activities with the Transatlantic Council of the Boy Scouts of America.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JAMES J. WEST
Attorneys for Petitioner
105 North Front Street
Suite 210
Harrisburg, PA 17101
(717) 233-5051